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stock are distinct and different from the capital of the bank. The shares may be taxed though the capital itself be invested in non-taxable securities. And the officers of the bank may be required, under the provisions of Acts 1883-84, p. 568, sec. 17, to pay the tax on the shares so assessed. In no other way can the shares of non-residents, shareholders, be reached. This provision of the Act does not render the tax a tax on the capital of the bank.

2. *BANK STOCK—Situs for taxation—Pleading—Amendments.* The situs of bank stock for the purpose of taxation is, under the provisions of Acts 1883-84, p. 568, sec. 7, the place where the bank is located, and it is immaterial where the stockholder resides. Hence it is not error to refuse to allow amendments to the pleadings merely averring the non-residence of a certain number of the stockholders.

3. *COURT OF APPEALS—Errors not brought to attention of trial court.* Alleged errors which are outside of the pleadings and do not appear ever to have been brought to the attention of the trial court, will not be considered, on error or appeal, in the Court of Appeals.

BANKERS LOAN & INVESTMENT CO. AND OTHERS V. HORNISH AND OTHERS.—Decided at Wytheville, June 17, 1897.—*Harrison, J* :

1. *DEEDS OF TRUST—Intermediate judgments—Subrogation—Assignments.* A third person who advances money to pay off notes given for the purchase price of real estate secured by a first deed of trust thereon, and who stipulates that he is to have a first lien, and pays to the holder of the notes the full amount thereof and takes them in uncanceled, and holds them by consent of all parties for further protection, and to avoid all contingencies and complications, and also takes a deed of trust on the land to secure the loan, is entitled to be subrogated to the rights of the holder of said notes and has priority over intervening judgment creditors of the grantor. It was not necessary to take an assignment of the notes. Subrogation is the act of the law and the creature of a court of equity, and depends upon principles of law and justice and not upon contract.

2. *PLEADING—Subrogation.* The right of subrogation need not be specifically claimed in the answer of one entitled to its benefits. It is sufficient if the facts alleged and established by the evidence justify its application at the instance of a party asking its aid and protection.

MARCHANT AND ANOTHER V. HEALY AND OTHERS.—Decided at Wytheville, June 17, 1897.—*Buchanan, J* :

1. *APPEALS—Amount in controversy—Dismissal.* The amount in controversy in this case is the difference between the amount claimed by the appellants and the amount recovered, and this sum being less than \$500 the appeal will be dismissed, although appellees raised no objection to the jurisdiction of the court.

BUFORD AND OTHERS V. NORTH ROANOKE LAND CO.—Decided at Wytheville, June 17, 1897.—*Keith, P* :

1. *APPEALS—Refusal of bill of review—When petition for appeal must be presented.* Under the terms of sec. 3455 of the Code the petition for an appeal from a decree refusing a bill of review to a decree rendered more than six months prior thereto

must be presented within six months from the actual date of the decree appealed from, and not from the beginning or the end of the term at which it was rendered.

STONEBRAKER & HUTCHINS V. HICKS.—Decided at Wytheville, June 17, 1897.—*Harrison, J.*:

1. DEED FROM HUSBAND AND WIFE—*Consideration—Fraud.* A wife, acting *bona fide*, may purchase property of her husband, and as a part of the consideration may assume the payment of his debts charged as liens on the property purchased. In the absence of fraud apparent on the face of the deed, or necessarily inferred from its terms, fraud will not be presumed, but must be proved with clearness and certainty. If it is charged that the price paid for the property is so inadequate as to amount to fraud the burden of proving such inadequacy is on the party alleging it. In the case at bar the evidence does not establish fraud on the part of the wife.

COMMONWEALTH V. FULKS AND OTHERS.—Decided at Wytheville, June 17, 1897.—*Keith, P.*:

1. RECOGNIZANCES—*Condition of in criminal cases.* A recognizance taken by a county court from a principal and sureties, with condition that the principal shall "personally appear in this court on the first day of the next term and surrender himself into custody and not depart thence without the leave of this court" is a void recognizance because the condition is not a substantial compliance with sec. 4093 of the Code, which prescribes that "the condition when it is taken of a person charged with a criminal offence, shall be, that he appear before the court, judge, or justice, before whom the proceeding on such charge will be, at such time as may be prescribed by the court or officer taking it, to answer for the offence with which such person is charged."